

### **REMARKS**

The applicant respectfully requests reconsideration in view of the amendment and the following remarks. The applicant deleted silicone-based surfactant from claim 1.

Claims 1, 3-18, 20-28, 30-39, 41-48, 50-65, 82-85, 87, 89 and 91 were rejected as being obvious over USPN 5,558,806 ("Policello") and USPN 5,078,782 ("Nielson"). The applicant respectfully traverses this rejection.

---

#### **Comments to the Interview dated March 13, 2008**

The applicant had an interview and discussed the reference Policello and discussed amending claim 1 and deleting silicone-based surfactant from claim 1 in order to distinguish from Policello. The applicant has deleted this term as discussed during the interview.

Claims 1, 3-18, 20-28, 30-39, 41-48, 50-65, 82-85, 87, 89 and 91 were rejected as being obvious over Policello and Nielson. Polyalkyleneoxide polysiloxane is a required surfactant in the Policello composition (see for example, in the title, abstract and column 2, lines 16 – 58).

In the current application 09/916611, it is the examiner's contention that Policello discloses both a surfactant and 2,4-dichlorophenoxyacetic acid. However, the polyalkyleneoxide polysiloxane surfactant disclosed by Policello was later found to be unstable in acidic conditions. Reference can be found in US6300283 (Sakuta) (see enclosed copy). In Column 1 lines 50 and following, Sakuta explains the limiting factor of using previously disclosed polyalkyleneoxide polysiloxane surfactants. These surfactants are not stable under acidic conditions, below pH 5.

In the applicant's application, the applicant discloses at least one chlorinated carboxylic acid herbicide in the acid form, such as 2,4- dichlorophenoxyacetic acid. While not specifically disclosed in the applicant's application, the compositions the applicant describes have pH ranges generally well below 5.0 (see the enclosed declaration). One reason for this is that the at least one chlorinated carboxylic acid herbicide is in the acid form.

In the applicant's compositions, the polyalkyleneoxide polysiloxane surfactants disclosed by Policello would not be stable. Further evidence is shown in the attached article scanned from ASTM Publication STP 1234. In this article by Policello, et.al. the inventor himself acknowledges the pH sensitivity of previously known polyalkyleneoxide polysiloxane surfactants.

Enclosed is a declaration executed by Johnnie Roberts that clearly demonstrates that the silicone surfactants of the Policello patent are unsuitable for use as the solubilizing surfactant of '611 invention. For the above reasons, this rejection should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 00306-00142-USA from which the undersigned is authorized to draw.

Dated: May 13, 2008

Respectfully submitted,

Electronic signature: /Ashley I. Pezzner/  
Ashley I. Pezzner

Registration No.: 35,646  
CONNOLLY BOVE LODGE & HUTZ LLP  
1007 North Orange Street  
P. O. Box 2207  
Wilmington, Delaware 19899-2207  
(302) 658-9141  
(302) 658-5614 (Fax)  
Attorney for Applicant

Enclosure: Declaration of Johnnie Roberts  
US Patent No. 6,300,283